



This document is scheduled to be published in the Federal Register on 05/10/2012 and available online at <http://federalregister.gov/a/2012-11149>, and on FDsys.gov

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-59; FAR Case 2012-012; Item II; Docket 2012-0012, Sequence 1]

RIN 9000-AM24

Federal Acquisition Regulation; Free Trade Agreement-Colombia

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement the United States-Colombia Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Colombia.

DATES: Effective Date: May 15, 2012.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before [insert date 60 days after FEDERAL REGISTER publication date] to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-59, FAR Case 2012-012, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching "FAR Case 2012-012". Select the link "Submit a Comment" that corresponds with "FAR Case 2012-012." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2012-012" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005-59, FAR Case 2012-012, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-59, FAR Case 2012-012.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR), to amend FAR part 25 and the corresponding provisions and clauses in FAR part

52 to implement the United States–Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) (19 U.S.C. 3805 note).

This Trade Promotion Agreement is designated in the FAR as the Colombia Free Trade Agreement (FTA). The FTA provides for–

- Waiver of the applicability of the Buy American statute (41 U.S.C. chapter 83) for some foreign supplies and construction materials from Colombia; and
- Applicability of specified procurement procedures designed to ensure fairness in the acquisition of supplies and services (see FAR 25.408).

II. Discussion and analysis

This interim rule adds Colombia to the definition of “Free Trade Agreement country” in multiple locations in the FAR.

The Colombia FTA covers acquisition of supplies and services equal to or exceeding \$77,494. The threshold for the Colombia FTA is \$7,777,000 for construction. The excluded services for the Colombia FTA are the same as for the Bahrain FTA, Dominican Republic–Central American FTA, Chile FTA, NAFTA, Oman FTA, and Peru FTA.

Because the Colombia FTA construction threshold of \$7,777,000 is the same as the WTO GPA threshold, no new clause alternates are required for the Buy American Act–

Construction Materials under Trade Agreements provision and clause (FAR 52.225-11 and 52.225-12) or the Recovery Act FAR clauses at 52.225-23 and 52.225-24.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Although the rule now opens up Government procurement to the goods and services of Colombia, DoD, GSA, and NASA do not anticipate any significant economic impact on U.S. small businesses.

The Department of Defense only applies the trade agreements to the non-defense items listed at Defense Federal Acquisition Regulation Supplement 225.401-70, and acquisitions that are set aside or provide other form of preference for small businesses are exempt. FAR 19.502-2 states that acquisitions of supplies or services with an anticipated dollar value between \$3,000 and \$150,000 (with some exceptions) are automatically reserved for small business concerns.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAC 2005-59, FAR Case 2012-012), in correspondence.

V. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at FAR 52.212-3, 52.225-4, 52.225-6, and 52.225-11 currently approved under OMB Control Numbers 9000-0136, 9000-0130, 9000-0025, and 9000-0141, respectively, in accordance with the Paperwork

Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because it is just a question of which category offered goods from Colombia would be listed under.

VI. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the effective date of the Free Trade Agreement with Colombia is May 15, 2012. This is a reciprocal agreement, approved by Congress and the President of the United States. It is important for the United States Government to honor its new trade obligations to Colombia, as Colombia in turn honors its new trade obligations to the United States. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: May 3, 2012

Laura Auletta,
Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

3. Amend section 25.003 by removing from paragraph (2) of the definition "Designated country", and the definition "Free Trade Agreement country" the words "Chile, Costa Rica" and adding the words "Chile, Colombia, Costa Rica" in their place.

4. Amend section 25.400 by removing from paragraph (a)(2)(ix) "; and" and adding ";" in its place; removing from paragraph (a)(2)(x) ";" and adding "; and" in its place; and adding paragraph (a)(2)(xi) to read as follows:

25.400 Scope of subpart.

(a) * * *

(2) * * *

(xi) Colombia FTA (the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) (19 U.S.C. 3805 note));

* * * * *

25.401 [Amended]

5. Amend section 25.401 in the table that follows paragraph (b) by removing from the table heading "CAFTA-DR, Chile" and adding "CAFTA-DR, Colombia FTA, Chile" in its place.

6. Amend section 25.402 by revising the table that follows paragraph (b) to read as follows:

25.402 General.

* * * *

(b) * * *

Trade Agreement	Supply Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	\$202,000	\$202,000	\$7,777,000
FTAs			
Australia FTA	77,494	77,494	7,777,000
Bahrain FTA	202,000	202,000	10,074,262
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,494	77,494	7,777,000
Chile FTA	77,494	77,494	7,777,000
Colombia FTA	77,494	77,494	7,777,000
Korea FTA	100,000	100,000	7,777,000
Morocco FTA	202,000	202,000	7,777,000
NAFTA			
—Canada	25,000	77,494	10,074,262

-Mexico	77,494	77,494	10,074,262
Oman FTA	202,000	202,000	10,074,262
Peru FTA	202,000	202,000	7,777,000
Singapore FTA	77,494	77,494	7,777,000
Israeli Trade Act	50,000	-	-

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.212-5 by revising the date of the clause, and paragraphs (b) (40) (i) and (b) (41) to read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS ([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER])

* * * *

(b) * * *

___ (40) (i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act ([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER]) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, and 112-42).

* * * *

___ (41) 52.225-5, Trade Agreements ([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER]) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

* * * *

52.225-3 [Amended]

8. Amend section 52.225-3 by revising the date of the clause to read "**([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER])**"; and in paragraph (a) removing from the definition "Free Trade Agreement country" the words "Chile, Costa Rica" and adding the words "Chile, Colombia, Costa Rica" in their place.

52.225-5 [Amended]

9. Amend section 52.225-5 by revising the date of the clause to read "**([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER])**"; and in paragraph (a) removing from paragraph (2) of the definition "Designated country" the words "Chile, Costa Rica" and adding the words "Chile, Colombia, Costa Rica" in their place.

52.225-11 [Amended]

10. Amend section 52.225-11 by revising the date of the clause to read "**([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER])**"; and in paragraph (a) removing from paragraph (2) of the definition "Designated country" the words "Chile, Costa Rica" and adding the words "Chile, Colombia, Costa Rica" in their place.

52.225-23 [Amended]

11. Amend section 52.225-23 by revising the date of the clause to read "**([INSERT ABBREVIATED MONTH AND YEAR OF PUBLICATION IN THE FEDERAL REGISTER])**"; and in paragraph (a) removing from paragraph (2) of the definitions "Designated

country" and "Recovery Act designated country" the words
"Chile, Costa Rica" and adding the words "Chile, Colombia,
Costa Rica" in their place.

[BILLING CODE 6820-EP]

[FR Doc. 2012-11149 Filed 05/09/2012 at 8:45 am; Publication Date:
05/10/2012]